

BOARD OF APPEALS CASE NO. 5162

*** BEFORE THE**

**APPLICANTS: Matthew Semenkov &
Denise Mandrgoc**

*** ZONING HEARING EXAMINER**

**REQUEST: Variance to allow an addition
within the required 40 foot side yard setback;
3423 Ady Road, Street**

*** OF HARFORD COUNTY**

Hearing Advertised

*** Aegis: 8/3/01 & 8/8/01**

HEARING DATE: September 12, 2001

Record: 8/3/01 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Matthew Semenkov and Denise Mandrgoc are requesting a variance pursuant to Section 267-34C, Table II of the Harford County Code to allow an addition within the required 40-foot side yard setback (24-foot proposed) in an AG/Agricultural District..

The subject parcel is located at 3423 Ady Road, Street, Maryland 21154, in the Fifth Election District, and is more particularly identified on Tax Map 18, Grid 4C, Parcel 273, Lot 7, in the subdivision of Kiah Estates. The parcel contains approximately 9.91 acres.

The Applicant, Mr. Matthew Semenkov appeared, and testified that he and the Co-Applicant, Denise Mandrgoc, are the owners of the subject property. Mr. Semenkov described his property as topographically unique for several reasons. First, despite it's size of approximately 9.91 acres, the building envelope on the property is actually quite small. The lot is a long, narrow panhandle lot, on which the topography ranges from sloping to steep. The property is currently improved with a two-story dwelling constructed to the far left side of the lot. The house has a covered front porch and an attached rear deck. There is a separate frame storage shed located to the left rear of the dwelling. A tar and chip driveway runs down the panhandle to the left of the dwelling. The rear yard contains a well and septic system. The lower half of the property is located within a 100 year flood plain and Natural Resource District.

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The witness stated that he proposes to build a two story attached garage and mudroom. The attached garage will be similar in size and appearance to other attached garages in his neighborhood. The mudroom will be similar to other mudrooms commonly found in Harford County. Mr. Semenkov introduced a blueprint for the proposed addition (Applicant's Exhibit 1) showing that the proposed garage will be 28 feet by 28 feet. One side of the garage will encroach into the side yard setback as shown on Attachment 3 to the Department of Planning and Zoning Staff Report. The side of the garage will be 24 feet from the property line. The mudroom will be constructed between the existing dwelling and the proposed garage, and attached to both structures. He testified that due to the topography of the property, the placement of the existing home, and the rear septic and septic reserve, along with designated wetlands, the proposed location is the only place on his property where the attached garage and mudroom can practically be built.

Finally, Mr. Semenkov testified that his nearest neighbor lives over 1200-feet away from his home, and that his neighbors would not be able to see the proposed addition from their properties. For this reason, the witness does not believe that the requested variance would have any adverse impact on adjoining properties.

The Department of Planning and Zoning recommended approval of the subject request in its Staff Report dated July 30, 2001, stating that:

"The Department finds that the subject property is unique. The existing topography, Natural Resources District and septic reserve area severely limit the buildable area of this lot, The proposed location of the garage and addition appear to be the only practical alternative. The adjacent property is actively farmed and should not be impacted by the reduced side yard setback. There is existing vegetation consisting of trees and shrubbery, which provides screening along the property boundary. If approved, the request will not adversely impact the intent of the code or the adjacent properties."

No witnesses appeared in opposition to the requested variance.

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CONCLUSION:

The Applicants, Matthew Semenkov and Denise Mandrgocare are requesting a variance pursuant to Section 267-34C, Table II of the Harford County Code to allow an attached garage and mudroom within the required 40-foot side yard setback in an AG/Agricultural District. The proposed additions would reduce the required setback from 40- feet to 24- feet. Harford County Code § 267-34C, Table II: Design Requirements for Specific Uses in an Agricultural District provides for a minimum 40-foot side yard width for lots recorded after February 8, 1977.

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, *supra*, at 721. If, and only if, the subject property is found to be unique, the trier of fact may proceed to the second prong of the test.

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The second prong involves a determination of whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The limited size of the building envelope on the property necessitated placement of the existing dwelling on the far left side of the property. With the exception of this small building envelope, the topography of the lot ranges from sloping to steep. Development in the rear yard is limited by the existing septic system and septic reserve. In addition, the lower one-half of the subject parcel is located within a 100 year flood plain and Natural Resource District. There was no opposition testimony introduced to contradict any of these findings. Thus, the first prong of the Cromwell test has been met.

Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants.

The Hearing Officer finds that literal enforcement of the Code would result in practical difficulty in this case because if not for the unusual topography of the subject property, the Applicants would not need a variance to construct the proposed addition. If the variance is not granted, the Applicants will be denied property rights commonly enjoyed by others in their neighborhood. Other property owners within Kiah Estates, and Harford County generally, have greater flexibility in the construction of attached garages and mudrooms on similar sized lots.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest, because the closest neighboring property is over 1200 feet away, and the addition would not be visible from that property.

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The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date OCTOBER 1, 2001

**Rebecca A. Bryant
Zoning Hearing Examiner**